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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re DARCI B., a Minor.

DEBBIE B.,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Real Party in Interest.

B188452

(Los Angeles County  
Super. Ct. No. CK39647)

ORIGINAL PROCEEDINGS in mandate. Marilyn M. Mackel, Commissioner.  
Petition denied.

Lisa J. Huerta for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel,  
and Tracey Dodds, Deputy County Counsel, for Real Party in Interest.

## INTRODUCTION

Mother petitions from a juvenile court order terminating reunification services and setting the matter for a Welfare and Institutions Code section 366.26<sup>1</sup> hearing. We conclude that substantial evidence supported the juvenile court's determination that return of the child to Mother would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. We deny the petition.

## PROCEDURAL AND FACTUAL HISTORY

*Detention, Petition, and Detention Hearing:* On October 27, 1999, the Department of Children and Family Services ("DCFS") detained three-year-old D.B. (born in 1995) and six-year-old Darci B. (born in 1993) and placed the children in foster care. Their parents, Debbie B. ("Mother") and D.B., Sr. ("Father"), were incarcerated after Mother was arrested for child endangerment and Father was arrested for felony burglary for shoplifting in a Costco. Mother and the children were in a pickup with a camper shell, where they were living. The vehicle contained three loaded guns within the children's reach, a loaded magazine, several loose rounds of ammunition, and stolen merchandise. An "overpowering" stench emanated from the vehicle. Neither child was toilet-trained and six-year-old Darci wore a diaper and had defecated in her pants. Darci could not form sentences and spoke in broken English. The police report stated that the children acted like "animals" and one tried to bite a police officer.

Mother initially told police that Father had battered her, showing the police a bruise on her upper left arm, but she recanted when the police wanted to take a crime report. Darci said Father was "crazy," called her names, "whacked" her when she was bad, and called Mother the "F" words. Darci stated Mother was sometimes nice to her but pulled her by the hair and called her names, and said "I can't take it any more." D.B. had special needs, was not toilet-trained, and was non-verbal, hyper, unruly, and uncontrollable.

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<sup>1</sup> Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

*Petition:* On October 29, 1999, the DCFS filed a section 300 petition which alleged violations of subdivision (a) (serious physical harm arising from the parents' prior domestic violence and physical altercations, which violation the juvenile court did not sustain), and subdivision (b) (as subsequently modified, failure to protect the children by placing them in an endangering situation, Father's arrest and conviction for shoplifting, and the parents' need for assistance in dealing with both children's unique medical conditions, which violation the juvenile court did later sustain).

On November 2, 1999, the juvenile court found that a prima facie case for detaining the minors pursuant to section 300, subdivisions (a) and (b) was established, ordered Darci and D.B. detained, and ordered temporary placement vested in the DCFS.

*January 5, 2000, Jurisdictional and Dispositional Hearing:* In a December 7, 1999, interview, Darci appeared anxious, guarded, and easily distracted, and had a serious delay in her language skills, speaking in incomplete sentences and failing to form words. She said Father hit her once on her mouth, hurting her and causing blood to come out. Darci stated that she saw Father spank her brother D.B. on "on his pee-pee" because he was bad, making D.B. cry, and also saw Father "kiss [D.B.'s] pee-pee." Darci stated that she and D.B. touched each other's genitals, but nobody else touched her. D.B. had delayed language skills, spoke in incomplete sentences with unclear speech and words, and had difficulty making a meaningful statement.

Darci reported to two social workers that Father slapped her on her face when he got mad at her, and said Father touched her "here" while pointing to her vagina. Darci stated that Father "touched [D.B.] on his pee-pee—[Father] played with it. [Father] kissed [D.B.'s] pee-pee." D.B. also stated to a social worker that Father touched him, pointing to his penis. Several days later, while the foster mother changed clothes in a separate room, Darci took D.B. into their bedroom and closed the door. The foster mother saw Darci pull down D.B.'s pants and get on top of D.B., as if to simulate a sexual act. After the foster mother intervened, there was no further sexual acting out by the children. A Suspected Child Abuse and Neglect exam was performed on both children, but produced no sexual penetration or trauma to the genital area. The foster

mother reported that Darci used obscene language in her daily speech and slapped D.B.'s face when she was angry. Neither child had any boundaries and their toilet training problems continued.

Mother and Father were released from jail but did not respond to calls and telegrams. Mother and Father visited the children twice, but missed a scheduled visit on December 8, 1999, and had not rescheduled another visit. Although requested to do so, the parents made no contact with the children's social worker (CSW) and provided no statement.

On January 5, 2000, the case settled in mediation, which sustained two amended counts of violation of section 300, subdivision (b). The first sustained count was that Father was arrested (and later convicted) for shoplifting while returning to the vehicle in which the parents placed Darci and D.B., which contained loaded guns within the children's reach. The parents' behavior placed the children at risk of physical and emotional harm. The second sustained count was that Darci had encopresis and D.B. had Kawasaki's syndrome, and their parents required assistance in dealing with these unique medical conditions, placing the children at risk of harm.

The parents signed a court-ordered disposition case plan. Mother was ordered to attend DCFS-approved domestic violence counseling, parent education, conjoint marital counseling, and individual counseling to address domestic violence. Father was ordered to attend a DCFS-approved parent education program, conjoint marital counseling, and individual counseling to address domestic violence. The minors were ordered to participate in individual counseling. The parents had monitored visitation.

The juvenile court sustained the section 300 petition as amended and found the children to be persons described by section 300, subdivision (b), declared Darci and D.B. dependent children of the court, ordered custody taken from the parents and placed with the DCFS, ordered a psychological examination of the parents and children, ordered the DCFS to provide family reunification services, and ordered the case plan and visitation to be as described in the court-ordered disposition case plan.

*First Reunification Period: January 5, 2000, to April 4, 2001:* On June 11, 2000, Nancy Kaser-Boyd, Ph.D., reported results of her psychological evaluation of the children, Mother, and Father. Kaser-Boyd concluded: “In most of the areas of concerns about this family, including (1) minors not making appropriate developmental progress; (2) risk of domestic violence; and (3) risk of sexual abuse, it is my opinion that supervision of the family over a course of time will clarify the dynamics and the risks. If the children make developmental progress outside the family environment, it becomes pretty clear that family dysfunction (e.g., a lack of structure, frequent moving, or family violence, to name a few types of family dysfunction) was at the root of the problem.”

On June 23, 2000, a report from the agency whose personnel monitored the parents’ visits reported that Father had complete control over the children and Mother, who went along with whatever Father said. In early visits, Father made progress with agency staff and with his interactions with the children. In the past few weeks, however, his behavior escalated, and he again displayed erratic behavior and became angry, belligerent, and argumentative when the staff attempted to intervene.

By July 6, 2000, Darci and D.B. were re-placed after Father followed the foster mother home. Concerned about her family’s safety, she reported Father’s conduct. This occurred after Father threatened foster agency staff during visits.

For the July 7, 2000, hearing, the DCFS reported that the parents visited consistently, but their demeanor was hostile and confrontational. Father continued to be controlling with the children and Mother. Father raised his voice in demeaning tones to Mother, who then would walk away or put her head down. When D.B. did not follow Father’s exact words, Father would not engage D.B. during the rest of the visit, and Mother did not try to stop this interchange.

From February through May 2000, Mother and Father did not meet with the DCFS social worker, reported through their attorney only, and their demeanor was hostile, rude, and demeaning to DCFS staff. They told staff of the Children’s Home Society, which monitored visitation, that there was no reason to comply with the DCFS. Mother and Father did meet with a DCFS CSW on June 13 and 14, 2000, and produced evidence of

compliance with court-ordered classes in parenting and domestic violence classes and of their participation in individual and conjoint counseling.

The children did well in foster placement and were in individual therapy. The children were now toilet trained and did well in special education classes. Darci's speech improved. The parents, however, stated to Children Home Society staff that when the children were returned to their custody, Mother and Father would leave California and would not have their children in special education classes or therapy "because they are not morons." Father and Mother lived with Father's mother. A home inspection resulted in a finding that the home would not be suitable for Darci and D.B., a conclusion with which Mother agreed.

On August 3, 2000, the parents' former therapist informed the CSW that the parents needed more counseling. The DCFS provided Mother with two no-cost counseling referrals, and after the parents did not return telephone calls, on August 22, 2000, the CSW sent a certified letter with four counseling settings and an Info-line the parents could call to find counseling. As of October 5, 2000, the CSW had no knowledge of the parents' enrollment in any counseling or therapy. The children's therapist stated that the parents had not enrolled in conjoint therapy with the children.

For an October 5, 2000, review hearing, the CSW monitored the parents' September 19, 2000, visit. Father was hostile and became enraged when the CSW told him that a visiting room was not available for a 90-minute visit on Thursdays, but that visits could be on Thursdays when a visiting room became available. Father accused the CSW of not wanting the parents to visit their children, and stated he could not switch his schedule. Father refused the CSW's offer of a single, three-hour visit as unreasonable, and refused to provide his phone number, address, or information about the parents' therapy. The parents did not respond to the DCFS's monthly telegrams with times and dates for them to visit the CSW.

On October 5, 2000, the juvenile court found that return of the children to their parents' physical custody would create a substantial risk of detriment to the children's

physical and emotional well-being, and set the matter for a progress hearing on November 30, 2000.

For an April 4, 2001, hearing, the DCFS reported that the children progressed at Bienvenidos Children's Center. Darci continued to show sexual behaviors and to be oppositional, but had more positive interaction with adults and peers and was being enrolled in public school. Both children were enrolled in the Mental Health program at Bienvenidos. Darci showed little remorse when causing harm to others, and displayed deficient empathy to others. D.B. continued to be aggressive and unable to develop and maintain friendships. His sexual acting out had decreased but he continued to approach Darci in a sexualized way. On March 14, 2001, Darci and D.B. were alone in a therapy room, observed from behind a two-way mirror. Within 20 seconds, D.B. had his pants opened and Darci was playing with his penis and they were giggling. They took turns pulling their pants away from their buttocks and looking at each other. When the treatment worker returned to the session, they acted as though nothing had happened. The treatment worker concluded that the children had learned to avoid being caught, but had not internalized appropriate boundaries.

The parents went to the El Nido Agency for individual therapy. Father told the agency that he and Mother would only attend 26 sessions, and that the juvenile court had not mandated his participation in therapy but had only suggested it.

Mother and Father consistently visited the children. Darci was generally excited to see her parents, while D.B. engaged his parents only after lengthy prodding by them. Both children demonstrated some oppositional or defiant behavior during visits. Father used candy as an incentive to engage with D.B. and to make Darci comply with his demands or requests. Mother tended to be a passive observer who was not involved in setting limits for the children.

Therapists did not recommend returning the children to the parents. The parents opposed monthly appointments at the DCFS office, and came in only once in this period of supervision. Father communicated only by phone messages for the DCFS on weekends or after business hours, and threatened to sue persons connected with the case.

On March 23, 2001, the family therapist reported that she first saw all family members in January 2001, and since then the family had appeared for appointments every week. The therapist believed that Father required anger management, as he was guarded, angry, and secretive. Mother required assertiveness and domestic violence group counseling. Mother and Father had no friends or family in California other than their children. The therapist believed that Father had been abusive and had control issues with Mother. D.B. was severely disturbed and not receiving proper treatment. A severe speech impediment caused him to act out his communication through anger, exposing himself, and bothering people. He needed treatment for his odd behavior and speech problems. Darci also exhibited “odd” behaviors.

Father and Mother attended 26 therapy sessions of individual counseling. The therapist’s March 14, 2001, report stated that Mother could process her feelings about the dependency case and move past anger and feeling victimized. Her depression had lifted somewhat and she felt more positive about reunifying with her children. Mother had addressed “issues of child endangerment and ownership of the problem,” her marriage, her dependence, and her low self-esteem. She felt better about herself, and she was more confident and determined that her children needed her and she needed them. She was prepared to raise them with or without Father’s help. Mother had also made progress in cooperating with the social worker and complying with the conjoint therapy order. The therapist concluded that Mother did not seem to be a neglectful or abusive parent, a substance abuser, or a violent person.

On April 4, 2001, the juvenile court found that the parents had complied with the case plan, but found that returning the children to the parents’ physical custody would create a substantial risk of detriment to their physical or emotional well-being. The juvenile court ordered termination of family reunification services, found that the children were not adoptable, ordered the DCFS to initiate or continue long-term foster care, and set the matter for an October 3, 2001, review of permanent plan hearing.



*Long-Term Foster Care from April 4, 2001, to June 10, 2004:* For an October 3, 2001, hearing the DCFS reported that the parents lived at a Glendale motel and intended to move to the beach when they regained custody of the children.

Although Mother and Father maintained contact with their children, Bienvenidos Children's Center requested that Father not be allowed on its premises. The parents participated in family and individual counseling, anger management for Father and domestic violence for Mother. Nonetheless Father's statements to professionals involved and the parents' actions made it clear that they were only going through the motions to satisfy court-ordered requirements, as evidenced by Father's uncooperativeness, disrespect for Bienvenidos staff, poor anger management, threatening demeanor, and a recent report of a domestic dispute.

After 10 sessions with family members, a family therapist described the sessions as "difficult and chaotic," as Mother played with the children and Father expressed his dissatisfaction and impatience with the system. The sessions functioned as monitored family visits and the therapist made no progress to change family dynamics.

The parents' visitation at Bienvenidos Children's Center was liberalized to unmonitored contact on Bienvenidos grounds on July 24, 2001. After five unmonitored visits, Bienvenidos informed the CSW that they were no longer willing to host Father's visits, mainly due to a domestic dispute between Father and Mother on August 16, 2001 in the Bienvenidos parking lot and Father's continuing failure to avoid restricted areas. When Father was not present, a greater closeness emerged between Mother and Darci and D.B., and such periods were calm and harmonious, in contrast to the hyperactivity, confusion, and tension occurring when Father was present.

For an April 18, 2002, review hearing, the DCFS reported that on December 17, 2001, Darci was placed at Five Acres Group Home in Altadena and D.B. was placed at Westside Children's Group Home in Westchester. By March 27, 2002, the parents made no response to DCFS attempts to facilitate monitored visits. The parents telephoned at unscheduled times and demanded to speak to D.B. On these calls, Father was heard sounding angry, obstinate, and unreasonable in the background, "so loud that you can't

hear his wife.” On April 18, 2002, the juvenile court continued the matter for a progress hearing on July 18, 2002.

For the July 18, 2002, hearing, the DCFS reported that Father was still being uncooperative and Mother was still subservient to Father.

For an October 3, 2002, hearing, the DCFS assessed the parents’ one-bedroom apartment in a nice complex in Glendale. A couch folded out into a bed, and Father stated they could arrange things if the children came for an overnight visit. With enough notice, Father stated they could locate a larger home for the children to return to. The parents appeared to have moved positively in all areas, which was confirmed by the children’s social workers’ comments. Father stated there were no firearms in the home. The parents consistently had weekly visits with the children in the previous two months, and telephoned them regularly during the week. Earlier problems with the parents decreased and monitoring staff reported the visits went well. Although the case plan was long term foster care, there was a strong possibility that the children might be returned to the parents’ home.

For a November 4, 2002, hearing, the DCFS reported that D.B. and Darci were both placed at Five Acres. The juvenile court ordered the DCFS to implement a plan for Five Acres and ordered conjoint counseling, with unmonitored visits to begin after four sessions of conjoint counseling.

For a March 28, 2003, hearing, the DCFS reported that Father was arrested and jailed on February 5, 2003, charged with possession of a gun. Mother continued to visit the children and participate in conjoint counseling. Darci had become more moody since Father’s incarceration and staff believed she was disappointed in Father. D.B. also missed Father.

On March 28, 2003, the juvenile court ordered off-grounds, two-hour visits for Mother with the children, and set the matter for a permanent plan review hearing on September 26, 2003.

For the September 26, 2003, hearing, the DCFS reported that Father was released from jail and had returned to the home with Mother. Father had not visited with the

children since his release, but during her visits Mother allowed the children unmonitored phone calls with Father. Staff at Five Acres reported that the children's behavior became unmanageable after the calls, and requested monitored visits for Mother, who continued to allow calls to Father to occur despite being told not to do so. Mother attended family therapy with the children, but since his release Father had not attended family therapy, contacted the CSW to arrange a visit, or provided information about the crime that led to his incarceration. Mother said she believed she was enrolled to attend a parent support group at Five Acres, but had not yet started to attend.

On September 26, 2003, the juvenile court ordered an Evidence Code section 730 family evaluation, monitored visits for parents, and ordered the DCFS to supervise the case and visitation, with no discretion to liberalize visitation.

The Evidence Code section 730 evaluator, Dr. Michael P. Ward, concluded that Father had significant medical problems, but his medical documentation and situation needed updating by a physician. Dr. Ward found no evidence that a psychiatric problem would preclude either Mother or Father from being an adequate parent. Dr. Ward had concerns about personality disorder features which affected how the parents cooperated with court orders and with the dependency system, but they did not present as people prone to abuse or neglect children. There were concerns about possible neglect because of their lifestyle. Dr. Ward concluded that it would be appropriate to consider liberalization of visitation and to once again pursue reunification.

Dr. Ward found no data that either parent physically or emotionally abused the children. Although the parents' personality disorders, especially Father's, made them difficult to deal with, Dr. Ward had no data suggesting that the parents could not learn to function as good parents, except for their unwillingness or inability to understand and accept D.B.'s serious problems. The solution was to get the parents to accept D.B.'s problems and the need for professional help to deal with them.

Dr. Ward recommended one more vigorous attempt at reunification, despite the parents' problems and personality disorder characteristics. Dr. Ward recommend that the

juvenile court consider a progressive schedule of liberalized visitation leading to overnight visitation.

For the March 9, 2004, hearing, the DCFS reported that Mother, Darci, and D.B. had weekly family therapy with two therapists until the parents stopped coming to sessions on December 3, 2003. The DCFS reported that the parents did not have consistent positive involvement with the children and had not demonstrated their willingness to cooperate with treatment services. Although the family enjoyed their visits, the parents had been uncooperative with developing an appropriate academic plan for D.B., and put his academics at risk by refusing to allow D.B. to return to the Five Acres residential school.

In the March 9, 2004, hearing, the juvenile court ordered the DCFS to assess the parents' home and to hold a case conference with the parents, minors' counsel, and Five Acres staff. The juvenile court found that the goal was to return the children to the parents by September 7, 2004, and continued the matter to that date.

*Second Reunification Period: June 10, 2004, to January 4, 2006:* On May 5, 2004, Mother filed a section 388 petition requesting that the juvenile court reinstate family reunification services, liberalize visitation, and return the children to the parents. On June 10, 2004, the juvenile court granted the section 388 petition in part, and over DCFS objection ordered family reunification services for Mother and ordered the family to attend family group decision making.

For a September 7, 2004, hearing, the DCFS reported that the parents consistently visited the children, who enjoyed their unmonitored visits with the parents. The parents were consistently involved in therapy intervention services with both children's therapists. The DCFS convened a family group decision-making meeting on July 13, 2004, which produced a plan and time line for the children's return to the parents. The parents had worked closely with therapists and maintained regular contact with the DCS to accomplish goals set in the meeting. The DCFS offered financial assistance, but the parents were to locate appropriate housing.

Although Darci achieved age-appropriate developmental milestones, D.B. received psychotropic medication for ADHD and behavioral problems caused him difficulty in school, where he was suspended twice and had trouble completing minimal academic requirements. Father agreed to have D.B. return from public school to the Five Acres School. The children and parents had family treatment since February 27, 2004. Therapists reported that the parents were more cooperative and displayed more willingness to learn about their children's special needs. Father worked with the CSW on the family reunification plan, and the CSW and Father created an amiable relationship, causing the children to be less defensive with the CSW.

The parents had not yet found a larger apartment. Overnight visits were not yet appropriate, because the one-bedroom apartment lacked appropriate sleeping arrangements, given the unclear boundaries between Darci and D.B.

On September 7, 2004, the juvenile court found the parents in compliance with the case plan, ordered the DCFS to continue to provide family reunification services, and gave the DCFS discretion to liberalize visitation.

For a December 7, 2004, hearing, the DCFS reported that Father was arrested for robbery on November 29, 2004. Mother said he told her he brandished a weapon during the crime. Mother also disclosed that Father had verbally and emotionally abused the children during unmonitored visits, showing her inability to intervene on the children's behalf, stop the abuse while it was happening, or report the abuse. She reported to the DCFS that she had been very fearful of Father and unwilling to report the incidents for fear he would harm her.

D.B.'s behavior regression was found to have coincided with liberalization of the parents' visits and the leaving of his therapist.

On December 6, 2004, Mother enrolled in Victim's Domestic Violence counseling at the Glendale Counseling Center.

At a December 7, 2004, hearing, the juvenile court deemed the DCFS report a section 385 petition as to Father, ordered the DCFS to assess Mother's church members

as monitors for her off-ground visits, ordered monitored visits for Father in DCFS offices only, and set the matter for a March 8, 2005, hearing.

For the March 8, 2005, hearing, the DCFS reported that Mother reported that Father was sentenced to state prison; his sentence was unknown. Mother visited the children at Five Acres and the family therapist stated that Mother continued to be a positive influence in the lives of the children, who looked forward to her visits. Illness and Mother's transportation problems limited Mother's recent visits. Mother stated that she remained consistent with her group intervention at Glendale Counseling Center. Mother had not yet acquired adequate housing for the children's return. If Father's incarceration terminated his SSI benefits, Mother could not afford her current apartment, much less a larger apartment suitable for the children.

On March 8, 2005, the juvenile court ordered the DCFS to provide family reunification services for Mother, to refer Mother to Harriett Buhai or Legal Aid, to assist Mother to find a licensed therapist experienced in battered spouse syndrome, to provide Mother with transportation funds, and to ensure Mother was in individual counseling no later than April 1, 2005. The juvenile court set the matter for a permanent plan review hearing and for Mother's 366.22 hearing on September 8, 2005.

For a September 8, 2005, hearing, the DCFS reported that Darci would move to a foster home on September 12, 2005. D.B. remained at Five Acres. Mother maintained weekly contact with the children, although she canceled on occasions when she was upset about decisions by the DCFS and Five Acres. The children had no contact with Father since his arrest in November 2004. Mother felt ready to regain custody of her children, but recognized the limitations of her residence and of her moving on with her own life since Father's incarceration. Mother continued receiving Father's SSI benefits and started a 20-hours-a-week job at minimum wage.

Mother appeared unable or unwilling to relocate from the apartment she had shared with Father, who she had allowed to abuse the children. Mother's previous nine months of treatment had limited success. She appeared to have mental health issues that limited her understanding of what the children needed and what she could do for herself.

She had been dependent on Father and had not shown she could function without him. She relied on Father's church to pay her rent, even though she revealed she was not a church member, did not believe as Father's church members do, and had not communicated her different beliefs to Father or to his church. Income from Mother's part-time job would not pay her expenses or those of the children. The idea of moving to a less expensive area created severe anxiety that caused Mother to become unable to function, to be troubled by unrealistic fears of crime rates and potential dangers, and to be immobilized by fears and panics. Although claiming to be finished with Father, Mother kept in contact with him in prison and kept his voice on her answer machine. Mother's maintenance of the household caused the DCFS to consider it likely that upon release from prison, Father would resume his place and role in the family.

*Proceedings Leading to the Order Terminating Reunification Services and Setting the Matter for a Section 366.26 Hearing:* In an October 18, 2005, report, the DCFS stated that Mother complied with court-ordered monitored weekly visits and monitored phone calls. Mother presented no further information that would cause the DCFS to alter its recommendation to terminate reunification services.

On October 18, 2005, the juvenile court heard Mother's testimony. She had participated in domestic violence counseling since December 2004, and in conjoint counseling with the children. Domestic violence counseling had focused on how to be more assertive and how to get rid of a person who treated her badly. Mother stated that she had become much stronger, and did not want to be with Father, who was still in prison for robbery. Mother testified that she had not had contact with him while he was in prison, had torn up letters she received from him, and that a month earlier she sent Father a letter stating that when he was released from prison she wanted no further contact with him. Mother stated that if Father contacted her when he was released from prison, she would call the police and get a restraining order. Mother also stated she was going through a divorce from Father, but admitted that she had only obtained paperwork a week earlier, did not yet have an attorney, and had not yet told Father she intended to file for divorce.

Mother contradicted the DCFS report that she received Father's SSI benefits, and testified these benefits stopped when Father was incarcerated. Mother testified that she had her own business making beads and key chains, and had applied to the post office to be a mail sorter. Mother had a one-bedroom apartment, which at one time was approved for the children's overnight and weekend visits. The children, however, had never been there. She had removed Father's clothing from the apartment. She testified she was looking for a larger apartment. Mother testified that she desired the children to have overnight visits with her, and that she presented no risk of harm to them and could protect them and herself from Father.

Mother admitted that perhaps she did not leave Father soon enough, but testified that she now knew what she wanted and where she was going in life, and that her life would not be complete if she did not have her children with her. She testified that her attitude had changed, that she was stronger and could live without a man, and did not need anybody in her life other than her children. She admitted that she did not begin domestic violence counseling until after Father was arrested.

Mother admitted that before Father was incarcerated, she and Father had an unmonitored visit with the children on the Five Acre grounds during which Father yelled at the children on at least two occasions. Mother did not tell the CSW that Father was verbally abusive to the children. Mother admitted she was afraid of Father at that time, but when he got angry Mother told him he was wrong. Mother admitted there had been domestic violence in the past.

Darci, in sixth grade, also testified. Darci had been in her foster home for eight weeks. She tried to call D.B. every day and saw him once a week. Darci was happy knowing that Mother wanted her to live with her, and would feel happy to live with Mother, but Mother's house was too small for three people. Darci testified she was scared of Father, who yelled at her. The last time Father yelled at her she became angry because he made her and D.B. cry for no reason. Darci felt she could protect everyone from Father because she "learned how to fight and Kunfu [*sic*] and I know how to protect people."



On October 19, 2005, the juvenile court ordered the DCFS to report on Mother's correspondence with Father in prison and to obtain copies of all correspondence and evidence of communication between Father and Mother during the previous six months from Father's place of incarceration. On November 3, 2005, the juvenile court had received Mother's correspondence with Father and overruled Mother's objection to the admission of those letters into evidence.

On November 3, 2005, the DCFS reported regarding Mother's therapist, Edith Hartoonian, who wrote a progress letter documenting Mother's consistency, punctuality, and "positive energy within the therapeutic process." Hartoonian stated that Mother's current focus was increasing awareness, examining unhealthy patterns, gaining skills to empower herself, learning to set limits, enhancing communication skills, and changing her victim stance. Mother was struggling with disconnecting her ties with Father, as evidenced by her inability or unwillingness to move out of the apartment she had shared with him. Mother maintained the apartment as though Father were still living there; his voice was still on the answer machine, she received assistance from Father's church to pay her rent, and she had not removed his ramp from apartment steps for 10 months after he was incarcerated. Seventeen months after Mother stated, in June 2004, that she would have a new apartment by November 2004, Mother had not yet found another apartment. Mother still had Father's wheelchair, although she stated she wanted to donate it because she no longer needed it. Mother had regular communication with Father during his incarceration, showing her inability or unwillingness to break off ties with Father, who had been abusive toward her and toward the children. There were reportedly more than 20 letters with Father during his year of incarceration.

In therapy, Mother was working on issues of victimization, dependence, and low self-esteem, the same issues Mother addressed four and one-half years earlier.

The CSW concluded that Mother had made only limited progress, and the therapist gave no indication that there would be any significant results any time soon. The CSW also concluded that Mother had not shown that she comprehended the children's needs, and Mother had repeatedly stated that the children only needed to come

home and all their problems would be fine. The CSW also stated that Mother created a problem for Darci, by unknowingly or deliberately forcing Darci to choose Mother over her foster parents; after visits with Mother, Darci was defiant and unwilling to return to a stable home for a short time.

The DCFS concluded that Mother's professed inability to find a new apartment and leave the apartment she had shared with Father was evidence of her inability to make changes that might be necessary to keep her children safe once Father is released from prison. Mother did not appear to have tried to find another apartment.

Darci's "extreme parentification" caused her to feel responsible for D.B. and Mother, which caused concern to Darci's therapist and foster parents.

The CSW convened a meeting of Darci's previous therapist, D.B.'s previous and current therapists, the "FFA Social Worker," and Darci's program director, and reported that these professionals unanimously believed it would not be in Darci's best interest to be returned to Mother's care.

Father's earliest possible date for release from prison was 428 days, which was considerably less than his posted release date of January 4, 2009.

In a November 16, 2005, report, the DCFS stated that Mother's therapist indicated that Mother resisted breaking behavioral patterns. Mother had not reached any goals other than beginning to build a trusting relationship with the therapist, but even this was contradicted by Mother's letters to Father, which showed Mother's commitment to him. The CSW observed that despite positive statements about Mother's participation and attendance, Mother's therapist made no statements that Mother had made significant progress in her treatment.

Mother wrote 30 letters to Father from December 4, 2004, to October 1, 2005. With one exception, the letters documented Mother's commitment to Father and did not show that Mother was moving on with her life. The exception was an October 1, 2005, letter that asked whether Father should go his own way upon release because of Mother's heartache since he decided to fulfill his plan to get custody of the children.

The DCFS did not consider returning the children to Mother to be a viable plan, and recommended moving toward a permanent plan of legal guardianship or adoption and termination of reunification services.

On January 4, 2006, the juvenile court found that Mother had not complied with the case plan, that the children could not be returned to the parents' physical custody, and there was no substantial probability that they would be returned within six months. The juvenile court ordered family reunification services terminated for Mother, and set the matter for a section 366.26 permanent plan hearing on May 2, 2006.

Mother filed a notice of intent to file a writ petition on January 11, 2006. Mother's petition sought vacation of the order setting the matter for a section 366.26 hearing, an order to continue providing reunification services, and an order returning or granting custody of Darci to Mother.

### **ISSUES**

Mother claims that the juvenile court erroneously found a substantial risk of detriment to the children if they were returned to Mother's care. Mother claims that:

1. Substantial evidence supported the conclusion that Mother complied with the case plan;
2. A finding of substantial risk of detriment cannot be based on what a parent might do, but must be based on substantial evidence of detriment if the child is returned to the parent's custody; and
3. The juvenile court had evidence of sufficient services to ensure that family maintenance would be successful.

### **DISCUSSION**

#### *1. The Juvenile Court's Statutory Determination and the Standard of Review*

The juvenile court's January 4, 2006, hearing was pursuant to section 366.21, subdivision (f). Section 366.21, subdivision (f) states in relevant part: "At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court

shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the . . . efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, and shall make appropriate findings pursuant to subdivision (a) of Section 366."

Section 366.21, subdivision (g), states that if the time period in which court-ordered services were provided has met or exceeded the time period in Section 361.5, subdivision (a)(1), (2), or (3), and a child is not returned to the parent's custody at the permanency hearing held pursuant to subdivision (f), the court shall either: (1) continue the case for up to six months for a permanency review hearing; (2) order a section 366.26 hearing be held within 120 days, if the court does not continue the case for a permanency review hearing; or (3) order that the child remain in long-term foster care, but only if the court finds that there is a compelling reason for determining that a section 366.26 hearing is not in the child's best interests.

This court reviews the juvenile court's determination that return of Darci to mother would create a substantial risk of detriment to Darci's safety, protection, or physical or emotional well-being according to whether substantial evidence supports that determination. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625.)

## *2. Substantial Evidence Supports the Finding of Detriment to the Child*

Mother claims that the juvenile court had substantial evidence that Mother had done everything she possibly could do to regain custody of the children, by participating in individual counseling, group domestic violence counseling, and individual therapy to address domestic violence, regular, consistent visitation with the children, and separation from Father with the statement that she did not intend to reunify with Father. Mother also cites a lack of substance abuse or mental health issues, active membership in the Mormon church, a single arrest for child endangerment when the petition was filed in 1999, and her maintenance of a suitable home for the children without Father for more than a year, her part-time employment and her ability to support herself since Father's incarceration, and her effective use of public transportation.

We reject these contentions for several reasons. First, Mother has not broken her ties with Father, whose conduct had been detrimental to the children. As Mother admitted, Father had engaged in domestic violence against her, and had abused the children emotionally. Father's interest in controlling Mother and the children, his opposition to participating in family reunification services, and violation of visitation rules complicated and lengthened the case. Mother admitted that she had not informed the CSW that Father had been verbally abusive to the children during a visit before he was incarcerated. During the previous year Father's incarceration had offered Mother the chance to live independently and to separate herself from Father. She had not convincingly done so. Mother testified that she had not had contact with Father except for a letter she wrote him stating that she wanted no further contact with Father when he was released from prison. In fact, Mother had written more than 30 letters to Father while he was in prison. The CSW interpreted these letters as showing Mother's entrenched dependence and victimization and as showing that she had not yet emerged from a state of denial of domestic violence. Mother stated she was going to divorce Father, but admitted she had obtained paperwork for the divorce only a week earlier, did not yet have an attorney, and had not yet told Father she intended to divorce him. By continuing to live in Father's apartment, keeping his voice on her answer machine,

maintaining the apartment as it was when Father had lived there, and receiving assistance from Father's church to pay her rent, Mother showed that she had not yet cut her ties with Father. Mother's history with Father and her continuing loyalty to an inappropriate partner was evidence relevant to the juvenile court's determination. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212-1213.) Substantial evidence supported that finding that Mother had not effectively separated herself from Father, and thus return of the children to Mother would be detrimental to their best interests.

In addition, Mother did not have a suitable home for the children. Her one-bedroom apartment, in which she had formerly lived with Father, was not adequate and was too small for three people, as Darci herself recognized. Mother had claimed she would get a larger apartment for 17 months, but had not done so. Substantial evidence supported the determination that Mother did not have a suitable home to take custody of the children, and their return to Mother would be detrimental to their best interests.

Finally, as evidenced by the report of Mother's therapist, despite four and one-half years of therapy, Mother was still in the beginning phases of treatment, and Mother's helplessness and posture as a victim would prolong Darci's "parentification" and cause Darci to feel she had to protect Mother when in fact Mother should protect her children. The CSW concluded that Mother had not shown that she understood the children's needs and had stated that all the children needed was to return to her home and their problems would be fine. Mother had failed to make significant progress in therapy, and the therapist did not indicate that she would achieve significant results any time soon. The therapists and social workers for Darci and D.B. were unanimously convinced that it would not be in Darci's best interest to be returned to Mother's care. Even if a parent participates in court-ordered treatment programs, section 366.21, subdivision (f), makes a parent's failure to make substantive progress in such a program prima facie evidence that return would be detrimental. This was additional substantial evidence that return of the children to Mother would be detrimental to their best interests.

Mother claims that her active membership in the Mormon church provides evidence supporting her efforts to regain custody of the children. There was evidence, however, that even while relying on Father's church to pay her rent, Mother revealed that she herself was not a church member, did not believe as Father's church members do, and had not communicated her different beliefs to Father or to his church. The DCFS concluded that Mother had not shown she was independent of Father and of his church.

Mother cites her part-time employment and ability to support herself as evidence supporting her efforts to regain custody of the children. There was evidence, however, that Father's church paid the rent for Mother's apartment. Mother provided no evidence that she could provide a larger apartment for herself and two children, and her failure to find a larger apartment for 17 months suggested that she could not afford it.

We conclude that substantial evidence supports the juvenile court's determination that return of the children to Mother would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being.

3. *Mother Has Not Shown Error Because of the Lack of Specific, Nonconclusory Expert Psychological Opinion Evidence*

Mother claims that the evidence was not sufficiently specific and nonconclusory to support the determination of detriment to the children if they were returned to her care.

Mother cites two cases. The first, *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, addressed the problem which arose because, although the parents complied with the case plan quantitatively (attending all counseling, therapy, or parenting classes), a social worker concluded that the parents fell short qualitatively, i.e., the parents had not sufficiently internalized proper parenting skills. (*Id.* at pp. 1746, 1748.) The Court of Appeal found that failure to "internalize" general parenting skills was "too vague to constitute substantial, credible evidence of detriment." (*Id.* at p. 1751.) The court approved cases where the juvenile court found a "quantum of evidence concerning a parent's personality, character and attitudes required to sustain a detriment finding." (*Id.* at p. 1749.) *Blanca P.* does not apply to this case because, based on factors we have previously discussed, there was a "quantum of evidence" to sustain a finding of detriment

to the child. The finding of detriment was not based on some vague notion of Mother being unable to “internalize” her general parenting skills.

Mother cites a second case, *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689 (in which the parent completed the reunification case plan—*id.* at pp. 705, 708) for evidence that a juvenile court judge can consider in determining whether return of a child to a parent’s physical custody creates a substantial risk of detriment to the child. Such evidence includes: “whether changing custody will be detrimental because severing a positive loving relationship with the foster family will cause serious, long-term emotional harm;” “properly supported psychological evaluations which indicate return to a parent would be detrimental to a minor;” “whether the natural parent maintains relationships with persons whose presence will be detrimental to the ward;” “limited awareness by a parent of the emotional and physical needs of a child;” “failure of a minor to have lived with the natural parent for long periods of time;” and “the manner in which the parent has conducted himself or herself in relation to a minor in the past.” (*Id.* at pp. 704-705.)

Evidence of several of these factors is present in the case at bench. The juvenile court found that Mother maintained a relationship with Father, whose presence would be detrimental to Darci (and to Mother) if she were returned to Mother’s custody. There was evidence that Mother had not shown that she understood the children’s needs; she had stated that all the children needed was to return to her home and their problems would be fine. As of the January 4, 2006, Darci (and D.B.) had not lived with Mother since they were detained on October 27, 1999. Mother had failed to provide for and protect the children at the time of their detention, and during the dependency period Mother had allowed Father to disrupt and frustrate reunification efforts and had failed to stop or report Father’s emotional abuse of the children. Moreover, as in *Constance K.*, a group of professionals which included both children’s therapists, unanimously agreed that return of Darci to Mother’s custody would be detrimental. (*Constance K. v. Superior Court, supra*, 61 Cal.App.4th at p. 708.) Evidence of the *Constance K.* factors provides support for the juvenile court’s order.



Mother cites the lack of any expert opinion evidence that Mother could not be a successful parent. As *Constance K.* shows, such expert opinion evidence is not the sole factor upon which a juvenile court must base its determination of detriment to the child. Other substantial evidence supported the juvenile court's determination of detriment.

#### 4. *Mother's Other Claims of Error Lack Merit*

Mother cites the rule that although child's bond to a foster parent is relevant after termination of family reunification services, that evidence is not relevant when the juvenile court considers whether to return a child to the parent's custody, citing *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 498. Mother cites no evidence that the juvenile court relied on evidence of Darci's bond to foster parents in making its determination. At the time of the January 4, 2006, order, Darci had lived with her foster parents only since September 12, 2005. We find no error on this ground.

Mother claims that family preservation services and in-home mental health counseling for Mother and Darci would lead to successful reunification. The issue before the juvenile court, however, was whether return of Darci to Mother's custody would create a substantial risk of detriment to Darci's safety, protection, or physical or emotional well-being. The statute says nothing about requiring, or the need for, further services after return of custody.

Mother also claims that a lack of bonding between parent and child is not a relevant issue at this hearing. Mother cites no evidence that the juvenile court made a finding that there was a lack of bonding between Darci and Mother, or that the juvenile court relied on that finding as a basis for its ruling.

These claims do not show that the order was erroneous.

**DISPOSITION**

The petition is denied.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.